## *Remarks*

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-7 are pending in the application, with claims 1 and 7 being the independent claims. Claim 3 is sought to be cancelled without prejudice to or disclaimer of the subject matter therein. Claims 1 and 7 have been amended to specify the non-ionic material present in the fabric conditioning composition. Support for the amendment to claims 1 and 7 can be found in the claims as originally filed and in the specification at page 5, line 1, through page 6, line 20 and Tables 1-3 found on pages 19-21. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

***Rejections under 35 U.S.C. § 112***

The Examiner rejected claim 7 under 35 U.S.C. § 112, second paragraph and § 101 because the claim recited a use without setting forth any steps involved in the method/process. Applicants traverse this rejection as it pertains to the current claim 7. By the foregoing amendment, claim 7 now recites steps in the claimed method of improving the elevated temperature storage stability of a fabric conditioning composition. Thus, Applicants believe these rejections are moot and respectfully request that the Examiner reconsider and withdraw the rejections.

***Rejections under 35 U.S.C. § 102***

The Examiner rejected claims 1, 2 and 4-6 under 35 U.S.C. § 102 as allegedly anticipated by Demeyere *et al.* US 2002/0035053. The Examiner points to Examples 1 and 6-10 as well as the disclosure of Lutensol TO-5, which has 5 equivalents of ethoxylation. Applicants first note that Demeyere *et al.* contains only 2 Examples, one of which contains Lutensol TO-5 and assume that this is the disclosure that the Examiner is relying upon to make the rejection. Applicants also note that the Examiner has determined that claim 3 is novel over the cited art. By the foregoing amendments, claim 3 has been cancelled and each of independent claims 1 and 7 have been amended to incorporate the additional limitation of claim 3 that "in the nonionic material, n is from 2 to 4." Thus, Applicants submit that all pending claims are novel in view of Demeyere *et al.* US 2002/0035053. As such, Applicants respectfully request that the Examiner reconsider and withdraw this rejection.

***Rejections under 35 U.S.C. § 103***

The Examiner rejected claims 1-6 under 35 U.S.C. § 103(a) as allegedly obvious in view of Demeyere *et al.* US 2002/0035053. The Examiner again points to Examples 1 and 6-10 as well as the disclosure of Lutensol TO-5, which has 5 equivalents of ethoxylation. As discussed above, Applicants note that Demeyere *et al.* contains only 2 Examples, one of which contains Lutensol TO-5 and assume that this is the disclosure that the Examiner is relying upon to make the rejection. According to the Examiner, claims 1, 2 and 4-6 are obvious in view of Demeyere *et al.* because they are anticipated. As discussed above, each of the pending claims require that "in the nonionic material, n

is from 2 to 4" and thus are not anticipated by the disclosure of a fabric conditioning composition containing a nonionic component that has 5 equivalents of ethoxylation.

Regarding claim 3, the Examiner asserts that it would have been obvious in view of the cited art because:

> the disclosed alkyl ethoxylate has 5 equivalents of ethoxylation and the claim recites 2-4 but a *prime facie* case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art could have expected them to have the same properties. *Titanium Metals Corp. of America v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985).

Office Action at 4.

By the forgoing amendment, claim 3 has been cancelled. Thus, with regards to claim 3, this rejection is moot. However, because the forgoing amendment incorporates claim 3 into each of independent claims, Applicants will address this rejection as it pertains to the current claims. Applicants respectfully traverse this rejection as it pertains to the current claims.

Applicants respectfully disagree that the claimed fabric conditioning composition containing a nonionic component that has 2-4 equivalents of ethoxylation would have been obvious in view of the disclosure of Demeyere *et al.* Demeyere *et al.* is directed to stabilizing fabric conditioning compositions stored at *low* temperatures, *i.e.*, below room temperature. *See* Demeyere *et al.* page 1, para [0002]. Demeyere *et al.* purports to solve the problems found with storing fabric conditioning compositions at *low* temperatures by

including a nonionic surfactant that has 5-20 equivalents of ethoxylation. *See* Demeyere *et al.* Examples 1 and 2 on page 15.

In contrast to the nature of the problem solved in Demeyere *et al.*, the present invention relates to stabilizing fabric conditioning compositions stored at *high* temperatures. As such, a person of ordinary skill in the art wanting to make the claimed fabric conditioning compositions would not have relied upon the teachings of Demeyere *et al.*, which is directed to a different problem to be solved, *i.e.*, stabilizing fabric conditioning compositions stored at *low* temperatures. Even assuming, *arguendo*, that a person of ordinary skill in the art considering the problem of stability of fabric conditioning compositions at high temperatures would have looked to the teachings of Demeyere *et* al., that person would have had no reason to pick the specifically claimed nonionic surfactant component because that nonionic surfactant component is not even disclosed in Demeyere *et al.* Instead, Demeyere *et al.* discloses only a nonionic surfactant component that has 5-20 equivalents of ethoxylation. *See* Demeyere *et al.* Examples 1 and 2 on page 15

In sum, there is nothing in the cited art, the knowledge in the art and the nature of the problem to be solved, that would have provided a person of ordinary skill in the art a reason to arrive at the claimed fabric conditioning compositions containing a nonionic surfactant component that has 2-4 equivalents of ethoxylation.

The Examiner asserts that "a *prime facie* case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art could have expected them to have the same properties. *Titanium Metals Corp.*

*of America v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985)." Here, the range of 5-20 equivalents of ethoxylation disclosed in the cited art does not overlap with the claimed range of 2-4 equivalents of ethoxylation. In addition, Applicants submit that the ranges are ***not*** close enough that one skilled in the art could have expected them to have the same properties. As evidenced by the differences in the resulting fabric conditioning compositions, the range disclosed in the cited art does not have the same property as the claimed range. Specifically, the range disclosed in the cited art stabilizes fabric conditioning compositions stored at *low* temperatures. In contrast, the claimed range stabilizes fabric conditioning compositions stored at *high* temperatures. As such, the range disclosed in the cited art and the claimed range have been shown to not have the same properties, and therefore, can not be expected to have the same properties. Thus, Applicants submit that no *prima facie* case of obviousness exists.

Reconsideration and withdrawal of the rejection are earnestly solicited.

## *Conclusion*

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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